

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

AUG 15 2011

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

BY D. MARK JONES, CLERK  
DEPUTY CLERK

JOHN BARTON,

Plaintiff,

vs.

STATE OF UTAH, UTAH DEPARTMENT  
OF HUMAN SERVICES, UTAH DIVISION  
OF CHILD AND FAMILY SERVICES,  
UTAH OFFICE OF RECOVERY  
SERVICES, and JOHN DOES 1-50,

Defendants.

**ORDER**

Case No. 2:10-cv-507

Judge Dee Benson

Before the court is Defendants State of Utah, Utah Department of Human Services, Utah Division of Child and Family Services, and Utah Office of Recovery Services's, (collectively "State Defendants") Motion to Dismiss (Dkt. No. 6.) The court, having considered the memoranda and exhibit on file, enters the following order.

**BACKGROUND**

Mr. John Barton was married to Rhonda Barton ("Rhonda"). Together they had three children. The Bartons divorced in 1997. Rhonda was initially granted custody of the children. Eventually, in 2002, Mr. Barton was awarded custody of the children. Between 2002 and 2006 Rhonda made accusations against Mr. Barton, which resulted in the State Defendants removing

the children from Mr. Barton's care. After two years, Mr. Barton again received custody of his minor children.

Mr. Barton then brought this suit against the State Defendants for their actions that caused him to lose custody of his children. Mr. Barton alleges a violation of his Due Process and Equal Protection rights under the Fourteenth Amendment to the United States Constitution, civil rights violations, and a violation of the Utah Constitution.

In considering a motion to dismiss under Rule 12(b)(6), all well-pleaded factual allegations, as distinguished from conclusory allegations, are accepted as true and viewed in the light most favorable to Plaintiff as the nonmoving party. *Ruiz v. McDonnell*, 299 F.3d 1173, 1181 (10th Cir. 2002).

### ANALYSIS


Plaintiff's first, second, and third causes of action are barred by the Eleventh Amendment to the United States Constitution which bars claims against states and state entities.

Utah has not waived immunity for the Plaintiff's causes of action. *See* UTAH CODE ANN. §63G-7-101 *et seq.* (West 2010). Because Plaintiff's claims arise out of alleged civil rights violations and violations of the Fourteenth Amendment, his claims are barred by Utah's sovereign immunity statute.

Plaintiff's fourth cause of action consists of an allegation that Defendants violated Plaintiff's civil rights under the Utah Constitution. The court declines to exercise supplemental jurisdiction over Plaintiff's state law claim.

For these reasons, and for the reasons stated in the State Defendants' memoranda the Motion to Dismiss is GRANTED.

DATED this <sup>12<sup>th</sup></sup>~~14<sup>th</sup>~~ day of August, 2011.

  
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Dee Benson  
United States District Judge